

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

Cr.Appeal No.4-A/2004

Date of order: 24.08.2017

Khazan Chand
V.
State of J and K .

Coram:

Hon'ble Mr. Justice Alok Aradhe, Judge
Hon'ble Mr. B.S. Walia, Judge

Appearing counsel:

For the applicant (s)	: Mr. P N Raina, Sr. Adv with Ms. Diksha Handoo, Advocate.
For the respondent(s)	: Mr. R S Jamwal, Dy. AG.

Per Alok Aradhe,J:

This appeal has been filed against the judgment dated 31.01.2004 passed by the learned Special Judge Anti Corruption Jammu in challan No.153 titled State through Vigilance Organization, Jammu by which the appellant has been convicted for offences under Section 467, 409, 471 and 120-B RPC and 5(1)(d) read with Section 5(2) of Prevention of Corruption Act, 2006 and sentenced to undergo simple imprisonment for a period of five year for the offence under Section 467 RPC and to pay a fine of Rs.5000/- in default whereof he shall undergo simple imprisonment for a further period of six months and shall also undergo simple imprisonment of four years and to pay a fine of Rs.3000/- for the offence under Sections 409 RPC in default whereof he shall undergo simple imprisonment for a period of three months. For offence under Section 471 RPC, he has been directed to undergo simple imprisonment for a period of one year and to pay a fine of Rs.2000/- in default whereof he shall undergo simple imprisonment for a period of one month. He is

further sentenced to undergo simple imprisonment for a period of five years and to pay a fine of Rs.5000/- for the offence under Section 5(2) of the Prevention of Corruption Act, in default whereof he shall undergo simple imprisonment for a period of six months. He is also sentenced to undergo simple imprisonment for a period of four months and to pay a fine of Rs.1000/- for the offence under Section 120-B RPC in default whereof he shall undergo simple imprisonment for a further period of one month. All these sentences are directed to run concurrently.

2. This court by a detailed judgment passed today in Cr. Appeal No.5-A/2004 which was heard analogously with this appeal, has narrated the prosecution story in detail and therefore in order to avoid repetition and for the sake of brevity, we refrain ourselves from referring to the prosecution story again.
3. However, we may refer to the charges leveled against the deceased, Khazan Chand briefly that while functioning as Additional Deputy Commissioner, Jammu, some time in the year 1990, the deceased entered into criminal conspiracy with other accused persons with the object of obtaining undue pecuniary benefits conceals certain facts in the affidavit filed by him in WP No.413/1990 to facilitate payment of compensation on account of acquisition of land by the Army. It is the case of the prosecution against the deceased appellant that he inserted the word 'Addl' in Cheque through accused Keshav Chand in order to cheat the Government and to confer undue benefit on the beneficiaries and opened an account in his name.
4. Learned Senior counsel for the appellant submitted that the appellant has expired whereas co accused Chain Singh, Keshav Chand, Vijay Kumar, Fazal ud Din and Uttam Chand were already acquitted by the Trial Court. It is further submitted that this Court by a judgment passed today in Cr. Appeal No.5-A/2004 has acquitted the appellant Ved Prakash for the

offence alleged against him, therefore, entire edifice of the prosecution case in so far it pertains to criminal conspiracy stands demolished. On the other hand, learned Dy. AG has supported the judgment passed by the Trial Court.

5. We have considered the submissions made by learned counsel for the parties and have perused the record. It is pertinent to mention here that the amount in question was paid to the beneficiaries namely Rashpal Singh and Ravail Singh in pursuance of an award passed under the provisions of the J and K Land Acquisition Act. The allegation against the deceased appellant that he got the word 'Addl' inserted in the Cheque through Keshav Chand has not been proved by the prosecution. The prosecution in order to prove the aforesaid fact had examined two witnesses namely Dharam Pal and Chenju Singh who have not stated in their evidence that Keshav Chand had made the insertion of the word 'Addl' in the Cheque. The Trial Court has further found that the aforesaid fact has also not been proved from the testimony of R L Dhar, namely, the hand writing expert who has stated in his evidence that no definite opinion can be given that Keshav Chand made the insertion of the word 'Addl' in the Cheque. Thus the accused Keshav Chand has been acquitted in respect of the offence alleged against him by the Trial Court itself. Therefore, prosecution in our considered opinion has failed to prove the fact that the deceased had got the word 'Addl' interpolated in the Cheque through Keshav Chand. It is also pertinent to mention here that the Trial Court itself has acquitted Chain Singh, Ghulam Nabi Malik, Vijay Kumar, Fazal ud Din and Uttam Chand of the offences alleged against them including the offence under Section 120-B of the RPC. The deceased had made payment to the beneficiaries namely Rashpal Singh and Ravail Singh in pursuance of an award passed in their favour. No material has been placed by the prosecution on record that the award was

either challenged in a higher forum or was set aside, therefore, the entitlement of the beneficiaries to the compensation paid remains. Therefore payment of compensation was rightly made to the persons who were entitled to the same. Besides that, no material has been brought on record by the prosecution to show that deceased Khazan Chand received any pecuniary advantage or consideration for facilitating payment of the amount of compensation to the beneficiaries. The prosecution has failed to prove the charge of conspiracy as well as the charge that the appellant had obtained any pecuniary advantage for disbursement of the compensation in favour of the beneficiaries. Similarly, the prosecution has failed to prove that the respondent had tampered with the Cheque by inserting the word 'Addl' in view of the fact that accused Keshav Chand has already been acquitted by the Trial Court itself.

6. However, the aforesaid aspect of the matter has not been appreciated by the Trial Court. Therefore, we are inclined to quash and set aside the judgment dated 31.01.2004 in so far as it pertains to deceased appellant, Khazan Chand. In the result, the appeal is allowed.

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(B.S. Walia)
Judge

(Alok Aradhe)
Judge

Jammu:
24.08.2017
Raj Kumar